

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte OSAMU KONISHI

Appeal No. 2004-0370
Application 09/083,086

ON BRIEF

Before OWENS, DELMENDO and PAWLIKOWSKI, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 12-21.¹

¹ Claim 6 is not before us on appeal, but is still pending. In the amendment filed August 30, 2000 (paper no. 12, page 1) the appellant stated that "[c]laims 1 to 4 and 6 to 11 remain in this application." In the next amendment (filed February 21, 2001, paper no. 15) the appellant stated: "Cancel claims 1 to 4 and 7 to 11" (page 1). Claim 6 was not canceled. However, in that same amendment the appellant stated that "[c]laims 12 to 21 are now in this application." This statement indicates that the appellant intended to cancel claim 6. In the event of further prosecution, claim 6 should be canceled.

THE INVENTION

The appellant claims a method for restraining snoring during sleep by attaching to a person's back an inflatable bag which is inflated such that it is compressible to the extent that it permits the person to roll over to achieve left or right side sleeping position but precludes the person from sleeping on the person's back. Claim 12 is illustrative:

12. A method for restraining snorts by a person during a sleeping condition comprising the steps of:

a) providing a snort restraining device including an inflatable bag, said bag having a longitudinal axis and a fill opening;

b) inflating the bag through the fill opening with a selected volume and quantity of gas such that the bag is compressible to the extent that it permits a person to roll over to achieve left or right side sleeping positions, but precludes the person from sleeping on the person's back; and

c) attaching the device to the person's back with the longitudinal axis of the inflatable bag generally along a central portion of the person's back.

THE REFERENCES

Sullivan	132,500	Oct. 22, 1872
Polley	3,485,241	Dec. 23, 1969
Vujovic ² (German patent document)	3,015,371	Oct. 29, 1981

² Citations herein to Vujovic are to the English translation thereof which is of record.

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 12-16 over Polley in view of Vujovic, and claims 17-21 over Polley in view of Vujovic and Sullivan.

OPINION

We affirm the aforementioned rejections.

The appellant indicates that the claims stand or fall together (brief, page 4). Although an additional reference is applied to claims 17-21, the appellant does not separately argue these claims. We therefore limit our discussion to one claim, i.e., claim 12, which is the sole independent claim. See *In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c) (7) (1997).

Vujovic discloses an anti-snoring nightshirt (page 1). Vujovic provides an inflatable bag having a longitudinal axis and a fill opening (figures 1). The bag is attached to the back of a nightshirt (page 3) and is inflated with gas through the fill opening (page 2). Vujovic's teachings that the fill opening is on the end of the bag (figure 1) and that an inflating tube attached to the fill opening fits over the person's shoulder (page 2) indicates that the longitudinal axis of the inflatable bag is generally along a central portion of the person's back.

The appellant argues that "Vujovic does not recognize 'compressibility, gas volume and pressure' as being important factors for permitting rollover. In fact, Vujovic does not even address 'rollover' as a factor affecting sleeper comfort" (brief, page 5).³ The appellant also argues that "[n]either Polley nor Vujovic nor Sullivan recognize[s] that 'roll-over is important to sleeping comfort, and that proper inflation of an air bag can preclude on the back sleeping, while still permitting roll-over" (brief, page 7). The appellant, however, acknowledges that "[i]f a sleeper exerts enough effort, a forced rollover could occur" (reply brief, page 2).

The appellant's arguments are not persuasive because the appellant's claim 12 does not exclude the rollover from being a forced rollover. As acknowledged by the appellant, with enough effort a person wearing Vujovic's anti-snoring nightshirt could

³ The appellant argues, based upon the English abstract of Vujovic which the examiner relied upon in the final rejection, that Vujovic equates hard materials and an inflatable bag (brief, page 5). The English translation of Vujovic indicates that by "solid materials" (claim 5) Vujovic means that the accessory pack and the air tube are one piece (page 3), not that the accessory pack can be a solid member which is not inflated.

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do a forced rollover. Accordingly, we affirm the examiner's rejections.⁴

DECISION

The rejections under 35 U.S.C. § 103 of claims 12-16 over Polley in view of Vujovic, and claims 17-21 over Polley in view of Vujovic and Sullivan, are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

TERRY J. OWENS
Administrative Patent Judge

ROMULO H. DELMENDO
Administrative Patent Judge

BEVERLY A. PAWLIKOWSKI
Administrative Patent Judge

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⁴ A discussion of Polley is not necessary to our decision.

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